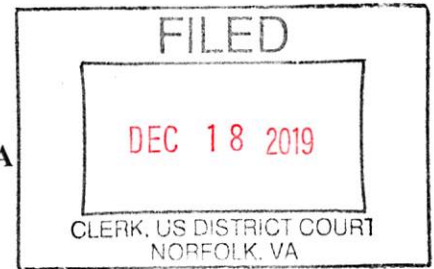


**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



CLAYTON GEORGE SMITH,

Petitioner,

v.

ACTION NO. 2:19CV72

**HAROLD W. CLARKE, Director, the
Virginia Department of Corrections,**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254 filed by counsel for Petitioner, Clayton George Smith (“Smith” or “Petitioner”). The petition alleges violation of federal rights pertaining to Smith’s convictions of armed common law burglary, robbery, aggravated malicious wounding, use of a firearm in the commission of a felony and conspiracy in the Circuit Court of Stafford County Circuit Court. As a result of the convictions, Smith was sentenced to serve 93 years in prison.¹

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation filed November 14, 2019 recommends dismissal of Smith’s petition with prejudice. Each party was

¹ Petitioner also pled guilty to a driving with a suspended license, third or subsequent offense, for which he was sentenced to 90 days in jail.

advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On November 27, 2019, the court received Objections to the Report and Recommendation filed by Smith's counsel.

The court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed November 14, 2019. It is, therefore, ORDERED that Respondent's Motion to Dismiss (ECF No. 8) be GRANTED and the Petitioner's petition (ECF No. 1) be DENIED and DISMISSED with prejudice.

Pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, the Court hereby **GRANTS** a certificate of appealability as to this Order on the basis of Petitioner's claim that the state court improperly admitted Petitioner's incriminating statements made to law enforcement in violation of Miranda v. Arizona, 384 U.S. 436 (1966). The Court grants no such certificate as to Petitioner's claim that he received ineffective assistance of counsel, finding that Petitioner has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c); see Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); Miller-El v. Cockrell, 537 U.S. 322, 335–38 (2003); Slack v. McDaniel, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court as to his ineffective assistance of counsel claim, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit on his ineffective assistance of counsel claim, he must do so within thirty (30) days from the date**

of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is directed to provide an electronic copy of this Final Order to all counsel of record.

/s/
Robert G. Doumar
Senior United States District Judge
/s/
ROBERT G. DOUMAR
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Dec. 18, 2019, 2019